

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Interim Suspension Order  
Against:**

**EDWARD ALBERT G. BALBAS, M.D.**

**Physician's and Surgeon's Certificate No. A 89036**

**Respondent.**

**Case No. 800-2016-026363**

**OAH No. 2022090648**

**ORDER GRANTING PETITION FOR INTERIM SUSPENSION ORDER  
FOLLOWING NOTICED HEARING**

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 16, 2022.

Robert W. Lincoln, Deputy Attorney General, represented petitioner William Prasifka, Executive Director of the Medical Board of California (Board).

Mary Chen, Esq., Doyle Schafer McMahon LLP, represented respondent Edward Albert G. Balbas, M.D. Dr. Balbas was not present at the hearing.

The ALJ received evidence at the hearing. The matter was submitted on December 16, 2022.

## **SUMMARY**

Petitioner seeks an interim suspension order (ISO) against respondent because of respondent's fraudulent acts and his criminal convictions for those acts. The proposed ISO places limits on respondent's medical practice consistent with a stipulation entered into between respondent and petitioner in May 2022 (May 2022 stipulation). Respondent does not contest he committed criminal fraudulent acts. He also does not oppose restrictions on his medical practice provided such restrictions conform to those contained in the May 2022 stipulation. Accordingly, the petitioner's request for an ISO is granted under the terms and conditions stated in the May 2022 stipulation.

## **FACTUAL FINDINGS**

### **License History, Jurisdiction, and Disciplinary History**

1. The Board issued Physician's and Surgeon's Certificate Number A89036 (license) to respondent on August 9, 2002. At all times relevant herein, the license was in full force and effect and is scheduled to expire on August 31, 2024.

2. On September 20, 2022, petitioner, in his official capacity, served and filed the Petition for an Interim Suspension Order (Petition), a Memorandum of Points and Authorities in support of the Petition, an affidavit, and supporting evidence. The Petition alleges respondent committed insurance fraud by fraudulently marking up

insurance reimbursement claims and pleaded guilty to criminal statutory violations concerning that fraud. The Petition further alleges respondent cannot practice medicine safely without restriction. Petitioner asserts the Petition, exhibits, and affidavit satisfy the criteria for issuance of an ISO under Government Code section 11529.

3. Respondent does not oppose the issuance of an ISO restricting certain aspects of his medical practice. Those restrictions were identified and agreed to in the May 2022 stipulation. Those restrictions consist of the following: no solo practice; no billing for any laboratory medical services to patients or their insurance providers except for electromyography (EMG) tests performed on-site at respondent's place of business; appointment of a medical billing monitor if respondent participates in any billing activity; and no association with respondent's co-defendants in the pending criminal action.

## **Background**

4. On April 29, 2014, the California Department of Insurance (DOI) Fraud Division received a fraud referral from Blue Shield of California (BSC) involving Corona Physical Medicine (CPM) and respondent. Respondent worked for CPM during the relevant period. (Exhibit 5.)

5. A DOI investigation in response to the BSC referral found that in 2011 respondent recommended to his patients they take a food sensitivity test called the ALCAT test. CPM submitted fraudulently inflated insurance reimbursement claims and bills for laboratory fees for these tests for amounts over what CPM was charged by the outside laboratory it used. The results of these overpayments were estimated to exceed \$381,000. (Exhibit 5.)

6. On September 12, 2016, a felony complaint (2016 felony complaint) against respondent and two other defendants was filed in case number RIF1604500 in the Superior Court of California, County of Riverside, based on the DOI investigation findings. The 2016 felony complaint charged respondent and the two other defendants with four counts of filing a fraudulent health insurance claim in violation of Penal Code section 550, subdivision (a)(6), a felony, and four counts of unlawfully charging additional fees for services not rendered in violation of Business and Professions Code section 655.5, subdivision (c), a felony. The 2016 felony complaint alleged respondent engaged in a pattern of felony conduct as defined in Penal Code section 186.11, subdivision (a)(1), because he committed two or more related felonies involving fraud and the taking of more than \$100,000. (Exhibit 3.)

7. In January 2017, as a condition of bail during the pendency of the criminal action based on the 2016 felony complaint, respondent agreed to several restrictions on his medical practice. These conditions consisted of the following: no solo practice, no billing for any laboratory medical services to patients or their insurance providers except for billing for EMG tests at respondent's place of employment; appointment of a billing monitor; and no association with any of the co-defendants identified in the 2016 felony complaint. These restrictions were incorporated into an order issued by the Superior Court in the criminal court case and became effective on January 13, 2017 (2017 Bail Order). (Exhibit 2.)

8. On May 17, 2017, respondent filed a Felony Plea Form in his criminal case. (Exhibit 4.) The Felony Plea Form, signed by respondent on May 5, 2017, states respondent agrees to enter a guilty plea to the following charges: two counts of violating Penal Code section 549 (enabling false or fraudulent insurance claims) and one count of an aggravated white collar crime enhancement under Penal Code section

186.11, subdivision (a)(2) (sentencing enhancement for the pattern of fraud).

Respondent also acknowledged he did the things stated in the charges to which he pleaded guilty. According to the Felony Plea Form, respondent's guilty pleas are conditional on receiving formal probation for five years and paying restitution of \$657,367.81.

9. Respondent has yet to be sentenced for the crimes he admitted to in the Felony Plea Form. Once respondent is sentenced, the restrictions on his medical practice stated in the 2017 Bail Order will no longer be in place.

10. In the interim, petitioner and respondent have agreed in the May 2022 stipulation to continue the practice restrictions contained in the 2017 Bail Order.

11. Petitioner has filed an accusation in this matter. The hearing on the accusation is set for March 14 through 17, 2023.

## **LEGAL CONCLUSIONS**

1. Government Code section 11529, subdivision (a), provides in pertinent part as follows:

The administrative law judge of the Medical Quality Hearing Panel . . . may issue an interim order suspending a license, imposing drug testing, continuing education, supervision of procedures, . . . or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of

the Medical Practice Act . . . or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

2. The ALJ shall grant the petition for an interim order where, in the exercise of discretion, the judge concludes that: "(1) There is a reasonable probability that the petitioner will prevail in the underlying action," and "(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order." (Gov. Code, § 11529, subd. (e).)

3. The burden and standard of proof in an ISO proceeding are "[c]onsistent with the burden and standards of proof applicable to a preliminary injunction." (Gov. Code, § 11529, subd. (e).) A plaintiff seeking a preliminary injunction bears the burden of presenting facts that show a reasonable probability of succeeding on the merits. (*Citizens for Better Streets v. Board of Supervisors* (2004) 117 Cal.App.4th 1, 6.) Thus, petitioner here has the burden of showing he has a reasonable probability of succeeding in proving there is a cause for discipline of respondent's license.

4. Business and Professions Code section 2234 authorizes the Board to take action against a licensee if the licensee has been charged with unprofessional conduct. Unprofessional conduct includes: (a) violating, assisting in, or abetting the commission of any act involving dishonesty that is substantially related to the qualifications, functions, or duties of a physician and surgeon. (Bus. & Prof. Code, § 2234, subd. (a)(1)); (b) the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon (Bus. & Prof. Code, § 2236, subd. (a)); (c) knowingly making or signing a false document related to the practice of medicine

(Bus. & Prof. Code, § 2261); and (d) presenting a fraudulent insurance claim (Bus. & Prof. Code, § 810, subd. (a)). The Board can also revoke or suspend a licensee for violation of Penal Code sections 549 or 550. (Bus. & Prof. Code, § 810, subd. (b).)

5. Petitioner has met his burden of showing he has a reasonable probability of success in proving respondent's misconduct. (Factual Findings 4–8; Legal Conclusions 1–4.) Respondent pleaded guilty to and admitted he enabled the defrauding of medical insurance providers. Respondent also pleaded guilty to engaging in a pattern of fraud because he repeated his wrongdoing and caused harm in excess of \$100,000. (Factual Findings 4–6, 8.) Respondent does not dispute his guilty pleas, which are deemed to constitute criminal convictions under Business and Professions Code section 2236, subdivision (d). Additionally, insurance fraud is a dishonest criminal act substantially related to the qualifications, functions, and duties of a physician and surgeon because a patient's trust is based on the honesty and integrity of their medical providers. The evidence presented therefore is sufficient to show there is a reasonable probability petitioner will prevail in a disciplinary action against respondent based on Business and Professions Code sections 2234, 2236, 2261, and 810.

6. Petitioner has also demonstrated permitting respondent to engage in the unrestricted practice of medicine will endanger the public health, safety, or welfare and the likelihood of danger to the public by failing to issue an order restricting respondent's practice is greater than the harm to respondent if such an order is issued. (Legal Conclusions 1, 2.) Respondent has acted dishonestly, without integrity, and exhibited poor judgment. He has violated the public's trust in the medical profession as well as his own patients' trust in his medical decisionmaking. (Factual Findings 4–6, 8.) He has not yet demonstrated any rehabilitation from his crimes. The proposed

restrictions will allow the Board to ensure patient safety by prohibiting respondent from practicing alone, making sure his billing is truthful and accurate, and barring respondent from associating with those persons allegedly involved in his criminal activity.

7. Based on the foregoing and the May 2022 stipulation reflecting the agreed-upon restrictions on respondent's medical practice, the following Order restricting respondent's practice will adequately protect the public until the accusation against respondent is heard and resolved. (Factual Findings 1–11; Legal Conclusions 1–6.)

## **ORDER**

The Petition for Interim Order of Suspension, following a noticed hearing, seeking the restricted practice of Physician's and Surgeon's Certificate No. A 89036 issued to respondent Edward Albert G. Balbas, M.D., is granted. Respondent is required to fully comply with the following restrictions until the issuance of a final decision by the Medical Board of California on the accusation filed against him:

1. **NO SOLO PRACTICE:** Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: (a) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or (b) respondent is the sole physician practitioner at that location.

2. **RESTRICTION ON BILLING FOR LABORATORY SERVICES:** Respondent is prohibited from billing for any laboratory medical services to patients or their insurance providers. However, respondent is expressly permitted to continue billing



only for electromyography (EMG) tests performed on-site at respondent's place of employment.

3.     HOURLY COMPENSATION/MEDICAL BILLING MONITORING: Respondent is currently compensated on an hourly basis. If at any time respondent participates in any billing activity, then a Billing Monitor will be required. Once respondent participates in any billing activity, respondent shall immediately secure as a billing monitor(s) one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor(s) at all times during business hours and shall retain the records. Respondent shall also pay all monitoring costs. Finally, the monitor(s) shall maintain a quarterly written report which includes an evaluation of respondent's billing performance, indicating whether respondent's billing practices are within the standard of practice.

4.     NO ASSOCIATION WITH CO-DEFENDANTS IN CRIMINAL MATTER: Respondent shall not associate with or have any contact with the co-defendants named in the Felony Complaint, to wit: Jon P. Brunelle and Alejandra Brunelle.

DATE: 12/29/2022



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings